

March 20, 2020

Mr. Devin Leary
Human & Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: Cockey Property at 12417 Timber Grove Road
Forest Conservation Variance
Tracking #02-20-3180

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability (EPS), Title 6 Forest Conservation was received by this Department on February 28, 2020. This request proposes to remove 9 of 29 specimen trees in order to develop the 8.8-acre, entirely forested site as three residential lots on private septic systems. All forest onsite is priority for retention due to its contiguity with Forest Buffers and forest corridor, in accordance with Section 33-6-111(b) of the County's Forest Conservation Law. The viable native specimen trees to be removed include: four tulip poplars ranging in size from 30 to 36 inches diameter-at-breast-height (DBH); a 32-inch DBH red maple, two chestnut oaks of 40 and 42 inches DBH, and a 37-inch DBH black oak. A nonnative, 42-inch DBH Ohio buckeye would also be removed.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner to show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The widespread distribution of 29 specimen trees across the site as well as the need for a septic system would likely preclude even one house being built without impacting any of those specimen trees on the 8.8-acre site, especially considering one of the trees is at the only entry point to the property. Consequently, full application of the law to the entire property would deprive the applicant of all beneficial use of the property, and we find that this criterion has been met.

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The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the number and distribution of specimen trees on the property, not general conditions of the neighborhood. Consequently, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of predominantly single family residential areas of a similar density to the proposed residential minor subdivision. Moreover, the new houses will be screened from neighboring houses by forest to be retained. Therefore, we find that the proposed development will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any streams, wetlands, floodplains, or associated buffers. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any prior actions resulting in a condition to necessitate this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Granting a variance to allow the removal of some specimen trees is consistent with the spirit and intent of the law given that their removal is necessary in order to maximize retention of priority forest in and adjacent to the Forest Buffer Easement while developing the site with three houses. Therefore, this criterion has been met.

Based on our review, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. The preliminary forest conservation plan (FCP) included with the variance application must be revised to reflect this variance and address EPS staff comments sent under separate correspondence and submitted as a final FCP.

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2. The following note must be on all plans for this project:

“A variance was granted on March 20, 2020 by Baltimore County Dept. of Environmental Protection & Sustainability to allow the removal of nine specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including maximizing contiguous forest retention.”

3. Granting this variance does not exempt future development activities on this property, including removal of any additional specimen trees, from full compliance with the Forest Conservation Law.

There is no mitigation required for the removal of the native trees, as they are all within forest to be cleared in accordance with an approved forest conservation plan.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/ges

- c. Mr. Daniel Ryder, Owner
Mr. Rick Richardson, Richardson Engineering
Ms. Marian Honeczy, Maryland Department of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name